



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/143067

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Child Care, a hearing was held on September 11, 2012, at Milwaukee, Wisconsin. This case is associated with cases FOP/143073, MOP/143072, FOP/143069, MOP/143068, and CCO/143070.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly determined Petitioner was overpaid child care benefits in the amount of \$31,688.51 for the period of 08/01/09 through 2/29/2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Second Floor
Madison, Wisconsin 53703-2866

By: Dean Landvatter, Fraud Investigator
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. During all relevant times, Petitioner resided at [REDACTED] with his two children and their mother, [REDACTED].

3. Petitioner and [REDACTED] purchased the [REDACTED] residence in October 2007. (Testimony of Petitioner)
4. Both of their names are listed as responsible parties for utilities and both contribute money towards the mortgage. (Testimony of Petitioner)
5. Petitioner receives his mail at the [REDACTED] address (Testimony of Petitioner and [REDACTED])
6. Petitioner and [REDACTED] had their first child in December 2007 and they had a second child in October 2008. (Id.)
7. In May 2009, Petitioner and [REDACTED] filed a police report regarding an individual who was breaking into their garage. At that time, Petitioner provided the police with the [REDACTED] address as his address. (Testimony of Petitioner and [REDACTED] and Exhibit 5)
8. In June 2010, Petitioner filed a police report indicating that someone had forged/alterd a money order that he purchased without his permission. At that time, Petitioner told police that his address was [REDACTED]. (Testimony of Petitioner and Exhibit 6)
9. In July 2011, Petitioner got into an accident in a parking lot. At that time, he told police he lived at [REDACTED]. (Testimony of Petitioner and Exhibit 7)
10. Inv. John Lucci conducted surveillance between April 30, 2012 and May 15, 2012 and observed Petitioner going from the [REDACTED] residence to his place of employment and back again. (Testimony of Inv. Lucci and Exhibit 3)
11. Between August 1, 2009 and February 29, 2012, [REDACTED] applied for and received State subsidized child care benefits, in the amount of \$31,688.51 (CARES # [REDACTED]).
12. On July 10, 2012, the agency sent Petitioner a Child Care (CC) Overpayment Notice, indicating that an overpayment of \$31,688.51 had occurred because accurate household information was not provided to the agency. (Exhibit 35)
13. On July 11, 2012, the agency sent [REDACTED] four Child Care Overpayment Notifications:
 - a. Claim Number [REDACTED] for \$14,071.36 for the period of 08/01/09 to 07/31/10
 - b. Claim Number [REDACTED] for \$2070.41 for the period of 08/01/10 to 09/30/10
 - c. Claim Number [REDACTED] for \$12,117.06 for the period of 11/01/10 to 10/31/11
 - d. Claim number [REDACTED] for \$3429.68 for the period of 11/01/11 to 02/29/12

(Exhibits 31-34)
14. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 14, 2012. (Exhibit 1)

DISCUSSION

An overpayment of childcare benefits occurs when the agency pays benefits in an amount greater than what the recipient was eligible to receive. *Wis. Admin. Code DCF 101.23(1)(g)*

Liability for overpayments, “shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household...Liability for repayment of an overpayment shall be joint and several. *Wis. Admin. Code DCF 101.23(3)(a) and (b)*.

The agency contends Petitioner is liable for an overpayment made to [REDACTED] because Petitioner lived with [REDACTED] during the time she received the overpaid benefits. It is also the agency’s position that had [REDACTED] included Petitioner in her assistance group, she would not have qualified for benefits because the household income would have exceeded program limits.

In determining eligibility for child care assistance, income of all assistance group members, except for minors and dependent 18 year olds, must be counted. *CCM §1.6.4*

“Assistance Groups are defined as an individual who is a custodial parent or placement parent, and their dependent children, and all dependent children with respect to whom the individual’s dependent child is a custodial parent...The Assistance Group also includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual, and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.” *Wisconsin Shares Child Care Assistance Manual (CCM) §1.3.8*

Petitioner does not dispute the fact that [REDACTED] received child care benefits totaling \$31,688.51 for the period of August 1, 2009 to May 31, 2012, nor does he quarrel with the agency’s calculation of the overpayment. However, Petitioner denies the agency’s assertion that he was living with [REDACTED] during the time in question.

It is Petitioner’s assertion that he and [REDACTED] only lived together from the fall of 2007 until some unspecified time in 2008, at which time he moved in with his mother. Petitioner further stated that he had only begun residing with [REDACTED] again in June 2012. Petitioner’s assertion that he resided with his mother between January 1, 2009 and May 31, 2012, is simply not credible.

First, [REDACTED] couldn’t recall when in 2008 Petitioner allegedly moved out of the residence. Second, neither Petitioner, nor [REDACTED] could produce any paperwork showing that Petitioner lived anywhere other than [REDACTED] between 2009 and 2012. Third, Petitioner and [REDACTED] provided inconsistent addresses. [REDACTED] testified that she believed Petitioner was residing at [REDACTED]. However, Petitioner testified that he lived at several different addresses with his mother on [REDACTED] and most recently [REDACTED]. Petitioner also testified that he lived with various other women during the time in question, but was extremely vague regarding his exact residence between January 2009 and April 2012. Fourth, [REDACTED] told Investigator Lucci that Petitioner did, in fact, live with her at least “part time” or half of the time. Fifth, Petitioner’s mother testified that between January 2010 and April 2012, Petitioner kept his belongings at her address, but he did not have his own room and his name was not on any lease that she would have had. Sixth, she further testified that Petitioner might spend the night with her, on average, two nights per week. Seventh, Petitioner’s mother testified that prior to January 2010, she did live at the [REDACTED] address with Petitioner and his father, but Petitioner was still only there on an inconsistent basis.

Based upon the foregoing, it is found that Petitioner’s assertion, that he was living with his mother during the time in question, is not credible.

The preponderance of the credible evidence supports a finding that Petitioner has resided with [REDACTED] between January 1, 2009 and May 31, 2012. First, Petitioner and [REDACTED] purchased the home together in the fall of 2007. Second, they produced two children between 2007 and 2008. Third, both names are listed as the responsible parties on utilities and both contribute to the mortgage and property taxes. Fourth, Petitioner has told police in 2009, 2010 and 2011 that his address is with [REDACTED] at [REDACTED]. Fifth, Investigator Lucci testified credibly that when he went to the [REDACTED] address to interview [REDACTED] she allowed him to look in the bedroom and he observed male clothing and shoes in the closet, which [REDACTED] identified as Petitioner’s. Sixth, Investigators Muller and Lucci both testified credibly that they were also allowed to look in a closet on the first floor and observed three male jackets in the closet, which [REDACTED] also identified as Petitioner’s. Seventh, Investigator Lucci conducted surveillance upon Petitioner and observed him moving between the [REDACTED] address and his place of employment during the course of at least two work days in May 2012.

Based upon the foregoing, I find that the agency has met its burden to prove that Petitioner was living with [REDACTED] during the entire overpayment period, August 1, 2009 through February 29, 2012 and that his income should have been counted in determining [REDACTED]’s eligibility for child care benefits.

CONCLUSIONS OF LAW

The agency has met its burden to prove that Petitioner is liable for an overpayment of childcare benefits in the amount of \$31,688.51 for the period of 08/01/09 through 2/29/2012.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

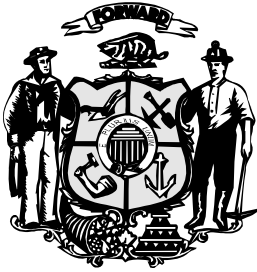
Appeals to Circuit Court should name the Department of Children and Families as the respondent. After filing the appeal with the appropriate court, it must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of September, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Children and Families – email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 20, 2012.

Racine County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud